

BANKING AND FINANCIAL INSTITUTIONS

Sub-Chapter 1

Banks

2.59.101 BANKS - RESERVE REQUIREMENTS (1) No bank shall act as a reserve bank unless:

(a) the bank has unimpaired paid-up capital and surplus of at least \$1,000,000. For purposes of this rule, "unimpaired paid-up capital and surplus" shall mean the aggregate of the bank's capital stock account(s) and its surplus account, as defined in 32-1-109, MCA, minus any deficit balance existing after aggregating the bank's undivided profits account, profit and loss (or similar) account, capital reserve account(s), valuation reserve account(s), and allocated or specific reserve account(s); and

(b) the bank has received written approval from the department in response to the bank's written request to act as a reserve bank.

(2) In addition to maintaining a reserve in the amount required by federal reserve board regulations, approved reserve banks shall maintain an additional reserve balance equal to at least 10% of bank deposits.

(3) The reserve shall be held in the form(s) and manner(s) established by federal reserve board regulations, or deposits in a federal home loan bank in the district in which the bank is located. (History: Sec. 32-1-455, MCA; IMP, Sec. 32-1-455, MCA; Eff. 12/31/72; AMD, Eff. 5/5/75; AMD, 1993 MAR p. 2776, Eff. 11/25/93; TRANS, from Commerce, 2001 MAR p. 1178.)

2.59.102 BANKS - DIRECT LEASING OF PERSONAL PROPERTY

(1) Under authority granted by 32-1-362, MCA, the department hereby permits state banks of Montana to engage in the business of direct leasing of personal property under the following regulations:

(a) A bank may purchase personal property to be leased only after it has a valid and binding commitment from the prospective lessee to lease the specific property under terms acceptable to the bank.

(b) Lease agreements with any one lessee may not exceed 40% of the unimpaired capital and surplus of the bank. If the lessee is also a borrower from the bank this 40% must be reduced by the balance of loans to the lessee.

(c) Every lease agreement must provide for full payout to the bank of its full acquisition cost of the lease property during the initial term of the lease.

(d) Residual value of the property at the end of a lease agreement's original term may be considered by the bank to constitute partial recovery of its cost of acquisition if such residual value is not more than 25% of the cost of acquisition.

(e) No lease agreement shall extend for an initial period of more than 10 years or the leased property's normal useful life, whichever is less, unless the bank receives from the department prior written approval of each lease agreement of longer term.

(f) Each lease agreement must include provisions whereby the lessee disclaims any liability of the bank for the condition of the leased property or its quality; and whereby the lessee assumes full responsibility for protection and maintenance of the leased property.

(2) Any formerly leased personal property returned to the bank by default, completion of the lease, or otherwise, must be disposed of by the bank by sale or lease within one year after gaining legal possession. (History: Sec. 32-1-362, 32-1-455, MCA; IMP, Sec. 32-1-362, 32-1-455, MCA; Eff. 9/5/74; AMD, 1989 MAR p. 1280, Eff. 9/1/89; TRANS, from Commerce, 2001 MAR p. 1178.)

2.59.103 RETENTION OF BANK RECORDS (IS HEREBY REPEALED) (History: Sec. 32-1-491, MCA; IMP, Sec. 32-1-491, MCA; NEW, 1983 MAR p. 1458, Eff. 10/14/83; REP, 1994 MAR p. 1137, Eff. 4/29/94; TRANS, from Commerce, 2001 MAR p. 1178.)

2.59.104 SEMI-ANNUAL ASSESSMENT

Total assets (Million)	Base	Plus rate/ Million	Over (Million)
0-1	0	.00085	0
1-10	850	.000105	1
10-50	1,795	.000085	10
50-100	5,195	.00005	50
over 100	7,695	.00003	100

Based upon this schedule, and upon calculation of the semi-annual value for the respective bank, the value shall be multiplied by the factor of 1.37 to determine the dollar fee assessment due the division of banking and financial institutions for the semi-annual period, rounded to the next highest dollar. (History: Sec. 32-1-213, MCA; IMP, Sec. 32-1-213, MCA; NEW, 1984 MAR p. 440, Eff. 3/16/84; AMD, 1985 MAR p. 776, Eff. 6/28/85; AMD, 1994 MAR p. 1143, Eff. 4/29/94; TRANS, from Commerce, 2001 MAR p. 1178.)

2.59.105 INVESTMENT SECURITIES (IS HEREBY REPEALED) (History: Sec. 32-1-433, MCA; IMP, Sec. 32-1-433, MCA; NEW, 1989 MAR p. 2196, Eff. 12/22/89; REP, 1994 MAR p. 1137, Eff. 4/29/94; TRANS, from Commerce, 2001 MAR p. 1178.)

2.59.106 INVESTMENT IN CORPORATE STOCK (1) Ownership of stock in a bank service corporation is subject to the following conditions:

(a) The department adopts the definition of bank service corporation defined by 12 USC 1861 as "a corporation

organized to perform services authorized by this Act, all of the capital stock of which is owned by one or more insured banks."

(b) Services which may be provided by a bank service corporation include, but are not limited to:

- (i) electronic data processing;
- (ii) accounting services;
- (iii) clearinghouse functions;
- (iv) investment services for the account(s) of bank(s);
- (v) advertising and marketing services;
- (vi) communications services;
- (vii) audit services;
- (viii) loan review and collateral inspections;
- (ix) retention of bank records, including data backup retention;
- (x) safekeeping services, including vault and safe deposit box facilities;
- (xi) courier services.

(2) As provided by 32-1-422, MCA, a bank may invest in the stock of certain corporations. The investment in the stock of any approved corporation shall be limited to:

(a) the greater of 5% of a bank's unimpaired capital and surplus;

(b) the minimum number of shares necessary to participate in government sponsored enterprises; or

(c) the minimum dollar value of such shares necessary for the bank to participate in the services or programs. This limitation shall be exclusive of all accrued or declared stock dividends generated by such corporate stock.

(3) In addition to the federal national mortgage association, the federal home loan mortgage corporation, and the federal agricultural mortgage corporation, the department has determined that it is in the public interest for banks to be able to invest in the following corporations, subject to the restrictions listed above:

(a) federal home loan banks. (History: Sec. 32-1-422, MCA; IMP, Sec. 32-1-422, MCA; NEW, 1993 MAR p. 2776, Eff. 11/25/93; TRANS, from Commerce, 2001 MAR p. 1178.)

2.59.107 INVESTMENTS OF FINANCIAL INSTITUTIONS (IS HEREBY REPEALED) (History: Sec. 32-1-424, MCA; IMP, Sec. 32-1-424, MCA; NEW, 1993 MAR p. 2776, Eff. 11/25/93; TRANS, from Commerce, 2001 MAR p. 1178; REP, 2002 MAR p. 901, Eff. 3/29/02.)

2.59.108 LIMITATIONS ON LOANS (1) In the context of this rule, the following definitions apply:

(a) "Person" means an individual; a corporation; a government, governmental subdivision or agency; a business trust; an estate; a trust; a partnership or association; a limited liability company; two or more persons having a

joint or common interest; or any other legal or commercial entity.

(b) "Commitment to lend or extend credit" includes, but is not limited to:

(i) undisbursed portions of operating, construction or other lines of credit, up to limits established by a written agreement between the lender and the borrower;

(ii) undisbursed portions of credit lines established to cover overdrafts;

(iii) undisbursed portions of credit card plans;

(iv) standby letters of credit.

(c) "Common enterprise" occurs when two or more persons combine to acquire, operate or control a business enterprise or property interest. Credit to a common enterprise includes:

(i) loans or extensions of credit to two or more persons when:

(A) loans or extensions of credit are used for a common purpose; and

(B) the expected source of repayment for each loan or extension of credit is the same for two or more of the persons, and those persons lack another source of income from which the loans or extensions of credit, together with the person's other liabilities, may be fully repaid.

(ii) loans or extensions of credit made:

(A) to persons who are related directly or indirectly through common control, including where one person is directly or indirectly controlled by another person; and

(B) substantial financial interdependence exists between or among the persons. Substantial financial interdependence is deemed to exist when 50% or more of one person's gross receipts or gross expenditures, on an annual basis, are derived from transactions with the other person.

(d) "Control" means the following:

(i) the ownership, control or ability to vote 25% or more of a corporation's outstanding voting stock.

(ii) the ability to control, in any manner, the election of a majority of a corporation's directors;

(iii) the power to exercise a controlling influence over the management or policies of a corporation.

(e) The proceeds of a loan or extension of credit to a person will be deemed to be used for the "direct benefit" of another person and the amount of the loan will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to the other person. For the purpose of this definition, when the proceeds are used to acquire property, goods or services through a bona fide arm's length transaction, a direct benefit will not have occurred with regard to the seller of the property, goods or services.

(i) "Bona fide arm's length transaction" means an actual transaction, performed in good faith, between two or

more parties, with each party acting in his or her own self-interest.

(f) "Loan or extension of credit" includes, but is not limited to:

(i) direct loans, whether on the bank's books or charged off the bank's books, subject to the exclusions in (3)(a) below,

(ii) loans, extensions of credit, or participation in loans or extensions of credit sold with recourse to or guaranteed by the bank,

(iii) letters of credit, other than standby letters of credit,

(iv) overdrafts, excluding intra-day overdrafts for which the bank receives payment prior to its close of business.

(2) For lending limit purposes, loans or extensions of credit will be combined as follows:

(a) Loans or extensions of credit to a person will be combined with loans or extensions of credit to one or more other persons when:

(i) proceeds of a loan or extension of credit are to be used for the direct benefit of the other person, or

(ii) a common enterprise is deemed to exist between the persons, to the extent that loan proceeds are used for the benefit of the common enterprise and repayment is dependent upon the common enterprise.

(b) A loan or extension of credit guaranteed by a person shall be aggregated with the person's other loans and extensions of credit only to the extent that the person receives direct benefit from the loan.

(c) If no direct benefit is received or no common enterprise exists, the combined loans or extensions of credit to a commonly owned or controlled group of borrowers shall not exceed three times the bank's lending limit.

(3) The following items will not be included when calculating the amount of a person's total loans and extensions of credit:

(a) Loans or extensions of credit, and participation in loans and extensions of credit that have been sold, provided:

(i) The loan, extension of credit or the portion of the loan or extension of credit sold as a participation is sold without recourse to the selling bank, and

(ii) In the case of participation, the participation agreement provides for a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders.

(A) Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to

their percentage participation at the time of the occurrence of the event.

(b) Loans, or extensions of credit, including portions thereof, that have been charged off the books of the bank in whole or in part, provided that the amounts charged off are:

(i) unenforceable by reason of discharge in bankruptcy;

(ii) no longer legally enforceable because of expiration of the statute of limitations or a judicial decision; or

(iii) no longer legally enforceable for other reasons, provided that the bank maintains sufficient records to demonstrate that the loan is unenforceable.

(c) All other loans or portions of loans specifically exempted by provisions of [32-1-432](#), MCA, or other applicable laws. (History: Sec. [32-1-432](#), MCA; IMP, Sec. [32-1-432](#), MCA; NEW, 1993 MAR p. 2776, Eff. 11/25/93; AMD, 1996 MAR p. 2161, Eff. 8/9/96; TRANS, from Commerce, 2001 MAR p. 1178.)

2.59.109 LOANS TO A MANAGING OFFICER, OFFICER, DIRECTOR OR PRINCIPAL SHAREHOLDER OF A BANK (1) The definitions of capital and unimpaired surplus are as follows:

(a) "Capital" shall mean the aggregate of the bank's outstanding capital stock account(s) minus any deficit balance existing in an impaired surplus account.

(b) "Surplus" is defined in [32-1-109](#), MCA. "Unimpaired surplus" shall mean surplus minus any deficit balance existing after aggregating the bank's undivided profits account, profit and loss (or similar) account, capital reserve account(s), valuation reserve account(s) and allocated or specific reserve account(s).

(2) Any loan to a managing officer, officer, director, employee or principal shareholder which was made before October 1, 1993, and which was in compliance with state law at the time, shall be considered legal throughout its term unless:

(a) the loan is renewed, or

(b) the terms of the loan are modified in any way, except for specified periodic interest rate adjustments, or

(c) security for the loan is changed in any way, except for substitutions or deletions agreed upon at the origination of the loan.

(i) If (a), (b) or (c) occur on or after October 1, 1993, the loan shall be restructured to comply with the provisions of [32-1-465](#) and [32-1-467](#), MCA, as amended.

(3) The following types of loans will not be included in the 2.5% of capital and unimpaired surplus aggregate loan limitation:

(a) loans or portions of loans guaranteed by a department, bureau, board, commission or establishment of

the United States, including a corporation wholly owned, directly or indirectly, by the United States;

(b) loans or portions of loans guaranteed by or covered by a commitment or agreement to take over or purchase, issued by an agency or board of the state of Montana;

(c) loans or portions of loans sold without recourse to a federally insured depository institution;

(d) loans or portions of loans secured by pledged deposits in the lending bank. (History: Sec. [32-1-465](#), [32-1-467](#), MCA; IMP, Sec. [32-1-467](#), MCA; NEW, 1993 MAR p. 2776, Eff. 11/25/93; TRANS, from Commerce, 2001 MAR p. 1178.)

2.59.110 FEES FOR THE APPROVAL OF POINT-OF-SALE TERMINALS (IS HEREBY REPEALED) (History: Sec. [32-6-401](#), MCA; IMP, Sec. [32-6-305](#), MCA; NEW, 1994 MAR p. 1143, Eff. 4/29/94; REP, 1998 MAR p. 2478, Eff. 9/11/98; TRANS, from Commerce, 2001 MAR p. 1178.)

2.59.111 RETENTION OF BANK RECORDS (1) Records of customer accounts must be held in accordance with 32-1-491, MCA.

(2) The schedule Bank Records Publication Appendix "A" establishes the minimum period for retention of bank records other than those specified in 32-1-491, MCA. Bank Records Publication Appendix "A" is maintained by the Commissioner of Banking and Financial Institutions, and may be updated at regular intervals not more than once a year by the commissioner. The December 11, 2006 edition of the Bank Records Publication Appendix "A" is incorporated by reference as part of this rule. A copy of this document can be obtained from the Division of Banking and Financial Institutions, Department of Administration, 301 South Park, P.O. Box 200546, Helena, MT 59620-0546.

(3) When a bank microfilms, or photographs, or uses other electronic or computer-generated data records in the regular course of business as permitted by 32-1-492 through 32-1-494, MCA, the retention period of the microfilm, photographs, electronic, or computer-generated data must be the same as specified in the Bank Records Publication Appendix "A".

(4) Banks must comply with all federal laws and regulations requiring specific retention periods for the records enumerated in those laws or regulations. In the event that a federal law or regulation conflicts with a retention period contained in Bank Records Publication Appendix "A", a bank must comply with whichever retention period is longer. Banks must comply with other applicable state laws governing retention of personnel records, corporation records, etc.

(5) If a bank does not maintain records set forth in Bank Records Publication Appendix "A", but maintains similar records with equivalent information, the bank's records must

be retained for the time specified within Bank Records Publication Appendix "A" as to the equivalent records.

(6) Records not covered by this rule or 32-1-491, MCA, are to be retained for a period of time determined appropriate by the bank's board of directors. Such retention periods determined appropriate shall be noted as a permanent part of the board's minutes.

(7) Customer accounts means savings deposit accounts, checking, or demand deposit accounts, certificates of deposit, safety deposit boxes, and trust accounts. (History: 32-1-491, MCA; IMP, 32-1-491, 32-1-492, MCA; NEW, 1994 MAR p. 1137, Eff. 4/29/94; TRANS, from Commerce, 2001 MAR p. 1178; AMD, 2006 MAR p. 3066, Eff. 12/22/06.)

2.59.112 INVESTMENT POLICIES (1) The bank's board of directors shall adopt an investment policy adequate for its bank. The policy shall include, at a minimum, circumstances relevant to those securities and investments the bank customarily owns or trades.

(a) With an emphasis on quality, the policy should describe those securities preferred by the bank's board of directors, and how the securities will be managed to incur a minimum risk to the bank.

(b) The bank's board of directors should formally approve those securities dealers with whom the bank does business. The bank's management should be familiar with the dealer's financial condition, abilities, and reputation in relation to the bank's needs.

(c) The board of directors should conduct a periodic review of its bank's investment portfolio, to determine adherence to previously established investment goals and policies, and to value all of its bank's investments, including investments in mutual funds. The board of directors should closely observe its bank's activity in "repurchase agreements" and "reverse repurchase agreements" for any adverse effects upon the bank.

(d) Information should be available in the bank's own credit files, or otherwise be readily accessible to bank management and examiners in sufficient detail to support a judgment that each issue in the portfolio is suitable for investment purposes.

(2) Banks are permitted to underwrite issues of investment securities if the following conditions are met:

(a) No banks having unimpaired capital and surplus of less than \$5,000,000 shall underwrite or otherwise participate as principal in the marketing of securities, except for the account of and upon specific instructions from its customer.

(b) Banks that qualify to underwrite or participate by having unimpaired capital and surplus of \$5,000,000 or greater, may do so with any securities that such banks could purchase for their own account.

(c) Accounting and other records of trading in such securities must be separately maintained from accounting and other records relating to purchases of securities for the bank's own account. (History: Sec. [32-1-424](#), [32-1-433](#), MCA; IMP, Sec. [32-1-424](#), [32-1-433](#), MCA; NEW, 1994 MAR p. 1137, Eff. 4/29/94; TRANS, from Commerce, 2001 MAR p. 1178; AMD, 2002 MAR p. 166, Eff. 2/1/02.)

2.59.113 INVESTMENTS BY BANKS TO PROMOTE THE PUBLIC WELFARE (1) The department incorporates by reference the office of the comptroller of the currency Code of Federal Regulations (12 CFR Part 24.1 through 24.7, 1996 edition) that implement 12 USC 24, which authorizes national banks to make investments designed primarily to promote the public welfare, including the welfare of low and moderate income areas or individuals, such as providing housing, services or jobs.

(2) A copy of 12 CFR Part 24.1 through 24.7 may be obtained from the Division of Banking and Financial Institutions of the Department of Administration, 301 South Park, Suite 316, P.O. Box 200546, Helena, MT 59620-0546. (History: Sec. [32-1-422](#), MCA; IMP, Sec. [32-1-422](#), MCA; NEW, 2000 MAR p. 2306, Eff. 8/25/00; TRANS, from Commerce, 2001 MAR p. 1178.)

2.59.114 TRUST COMPANY EXAMINATION FEES (1) A trust company shall pay the division of banking and financial institutions a fee in the amount of \$75 per hour for each examiner required to conduct an examination under [32-1-211](#) or [32-1-214](#), MCA. (History: Sec. [32-1-218](#), MCA; IMP, Sec. [32-1-211](#), [32-1-214](#), MCA; NEW, 2004 MAR p. 1947, Eff. 8/20/04.)

Sub-Chapter 5

Satellite Terminals

2.59.501 APPLICATION FOR SATELLITE TERMINAL AUTHORIZATION

(1) Application for authorization to install and maintain an automated teller machine may be filed by a financial institution, a business entity owned by a financial institution, or a business entity other than a financial institution. The application shall be made on forms provided by the department and shall contain the following information in addition to any other information which the department may determine to be necessary.

(a) The name and address of the financial institution or business making application.

(b) The proposed location of the machine.

(c) A general description of the area in which location is proposed and the manner of installation (e.g. freestanding, exterior wall, separate interior booth, etc.)

(d) The types of transactions which will be performed by the machine.

(e) The manner of operation, in detail, including whether the machine is on-line or off-line.

(f) With whom the use of the machine will be presently shared and the terms and conditions under which other financial institutions are participating or may participate in its use.

(g) The manufacturer and model of the machine.

(h) The distance from the proposed location to the principal place of business or branches thereof, of each participating financial institution.

(i) The distance from the proposed location to the nearest facility or main banking house of a bank not sharing the machine.

(j) Safeguards against the possibility of error or fraud in the operation of the machine.

(k) Customer protection procedures, including disclosure of customer rights and liabilities.

(l) Insurance and security provisions protecting the machine and its users.

(m) Owner certification of compliance, as required by [32-6-304](#), MCA.

(n) Completed specimen copies of all forms to be used in connection with the operation of the machine (e.g. transaction record, periodic account statement, customer information, etc.)

(o) Statement of how personal identification numbers are selected for customers.

(2) Application for authorization to install, maintain and operate a point-of-sale terminal must be filed by the merchant whose place of business is the proposed location of the terminal. The application shall be made on forms provided by the department and shall contain the following information in addition to any other information which the department may determine to be necessary:

(a) The name and address of the merchant making application.

(b) A general description of the place of business where the terminal is to be located and a description of the location and manner of installation of the terminal within the place of business.

(c) The manner of operation in detail, as it relates to electronic funds transfers, including whether the terminal is on-line or off-line.

(d) The name, address and phone number of the person immediately responsible for supervision of use of the terminal.

(e) With whom the terminal will be presently shared and the terms and conditions under which other financial

institutions are participating or may participate in its use.

(f) The manufacturer and model number of the terminal.

(g) The distance from the proposed location to the principal places of business of each participating financial institution.

(h) Safeguards against the possibility of error or fraud in the operation of the terminal.

(i) Customer protection procedures, including disclosure of customer rights and liabilities.

(j) Insurance and security provisions protecting the terminal and its users.

(k) Evidence of compliance with [32-6-305](#), MCA.

(l) Completed specimen copies of all forms to be used in connection with the electronic funds transfer operation of the terminal (e.g. drafts and receipts).

(m) Statement of how personal identification numbers are selected for customers.

(3) Changes in the information required by this section which occur after the receipt of authorization to maintain a satellite terminal shall be reported to the department before or at the time they occur. (History: Sec. [32-6-401](#), MCA; IMP, Sec. [32-6-401](#), MCA; Eff. 10/25/77; AMD, 1987 MAR p. 1968, Eff. 10/30/87; TRANS, from Commerce, 2001 MAR p. 1178.)

2.59.502 CRITERIA FOR AUTHORIZATION (1) The criteria for authorization of satellite terminals shall be whether installation, maintenance and operation of the terminal will conform to the requirements of Title 32, chapter 6, MCA and whether authorization will be consistent with the purposes expressed in [32-6-102](#), MCA. (History: Sec. [32-6-401](#), MCA; IMP, Sec. [32-6-401](#), MCA; Eff. 10/25/77; TRANS, from Commerce, 2001 MAR p. 1178.)

2.59.503 MAGNETIC ENCODING AND CARD STANDARDS (1) In order to comply with the requirements of mandatory sharing of automated teller machines as provided in chapter 6 of Title 32 of the Montana Code Annotated, such automated teller machines as may be installed in compliance with that chapter shall comply at a minimum with the following magnetic encoding standards:

(a) The standards of the American national standards institute (ANSI) for track II as provided in ANSI X4.16-1976, approved February 24, 1976; and,

(b) The standards of the American national standards institute for track III published in ANSI X9.A on September 1, 1977 (though not yet adopted in final form by ANSI).

(2) In order to comply with the requirement of mandatory sharing in chapter 6 of Title 32, MCA, such automated teller machines as may be installed must, at a minimum, comply with both of the standards herein adopted by

reference. While said standards refer to "credit" cards and "bank" cards, for the purposes of this rule they are intended to refer to the unique identification devices described in [32-6-308](#), MCA.

(3) The cards described in the ANSI standards herein adopted and used as a unique identification device as provided in [32-6-308](#), MCA, shall comply with the standards established in ANSI X4.13-1971, approved April 1, 1971, relating to the physical specifications of embossed cards, the specifications for the embossed data, the type style(s) to be used for embossing the account number line, and an account numbering system.

(4) Copies of the standards herein adopted by reference are available at the offices of the Division of Banking and Financial Institutions, Department of Administration, 846 Front Street, P.O. Box 200546, Helena, MT 59620-0546. (History: Sec. [32-6-401](#), MCA; IMP, Sec. [32-6-203](#), [32-6-308](#), MCA; Eff. 12/15/78; TRANS, from Commerce, 2001 MAR p. 1178.)

2.59.504 FEES FOR THE APPROVAL OF AUTOMATED TELLER MACHINES (1) The owner of the automated teller machine shall file a certificate with the commissioner of banking and financial institutions that contains the information required in [32-6-304](#), MCA. Those owners who are not banks, credit unions, or other financial institutions supervised by the state of Montana shall pay a fee of \$100 at the time each of their applications is submitted. (History: Sec. [32-6-401](#), MCA; IMP, Sec. [32-6-304](#), MCA; NEW, 1994 MAR p. 1143, Eff. 4/29/94; TRANS, from Commerce, 2001 MAR p. 1178.)

Sub-Chapter 9

Relocations

2.59.901 CHANGE OF LOCATION (1) Any change of location of a bank, other than drive-in facilities, from one site to another, irrespective of the buildings or structures involved, is considered to be a relocation requiring determination and approval or disapproval by the division as provided by [32-1-202](#), MCA. (History: Sec. [32-1-203](#), MCA; IMP, Sec. [32-1-203](#), MCA; Eff. 12/6/73; TRANS & AMD, 1998 MAR p. 2480, Eff. 9/11/98; TRANS, from Commerce, 2001 MAR p. 1178.)

Sub-Chapter 10

Merge Affiliated Banks

2.59.1001 APPLICATION PROCEDURE FOR APPROVAL TO MERGE
AFFILIATED BANKS

(1) Under authority granted by 32-1-218, MCA, the division adopts the following rules for the consolidation or merger into one bank of any two or more affiliated banks doing business in this state, if the resultant bank is to be a state bank.

(2) Applicant banks shall publish notice of intent to merge or consolidate. This notice shall be published in a newspaper of general circulation in the community or communities where the banking offices of all the merging banks are located, or if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto. Publication shall be made at least once a week on the same day for five consecutive weeks, and, when published in a daily newspaper, one additional publication shall be made on the 30th day from the date of the first publication. The application shall be mailed or delivered to the division of banking and financial institutions not more than 30 days subsequent to the first publication of notice.

(3) The application, including a request for authorization to operate the merged banks as branches, shall contain the following information:

(a) The exact corporate name and address of each bank and holding company participating in the merger or consolidation, the name and address of every bank any of whose stock is owned by a participating bank holding company, the percentage of total voting stock which that holding represents and the proposed names of the resultant bank and holding company.

(b) The name and address of, and the dates of publication in, the newspapers in which the required notice is published.

(c) The resolution or an authentic copy of the resolution, authorizing the merger adopted by a majority of the board of directors and ratified by the consent in writing of the shareholders of each bank owning at least two-thirds of its capital stock outstanding.

(d) A year-end financial statement for each participating bank and/or a consolidated statement for multi-bank holding company.

(e) A pro forma financial statement showing projected assets and liabilities, and first year earnings for the consolidated organization.

(f) For the resultant bank, a list of the names of the directors and principal executive officer, their ages, titles, salaries and shares owned in the participating institutions and the resultant bank, including a brief resume of the educational background, banking experience and other qualifications of each and explanation of the extent of common ownership, direct or indirect, or common management of the participating institution and the length of time such common ownership or management has existed.

(g) Specification and explanation of any new services offered as a result of the merger that individual participants presently do not offer, and existing services that will be discontinued as a result of the merger must be provided.

(h) If national banks are parties to the merger, the following information will be required for each national bank:

(i) Year-end call reports for three previous years plus the previous quarter.

(ii) Year-end financial statements.

(iii) Director's audit reports, if available.

(iv) Office of the comptroller of the currency administrative orders under which the bank might be operating.

(4) An application fee of \$2,000 plus \$200 for each bank involved in the merger shall be paid to the division of banking and financial institutions at the time of application and thereafter shall not be refunded in whole or in part.

(5) If an application is incomplete in any respect, or if additional information is required, the applicants will be so notified by the division of banking and financial institutions and allowed up to 30 days in which to perfect the application or provide additional information. An extension of this 30-day period may be obtained from the division of banking and financial institutions by showing good cause why it should be so extended. The division may delay processing, including extending the comment period for good cause. Processing will be completed no earlier than the 15th day nor generally not later than the 45th day following the date of the last required publication.

(6) The application shall be in letter form addressed to the Commissioner of Banking and Financial Institutions, Department of Administration, 846 Front Street, P.O. Box 200546, Helena, MT 59620-0546.

(7) This rule will be effective January 1, 1990. (History: Sec. 32-1-203, MCA; IMP, Sec. 32-1-371, MCA; NEW, 1989 MAR p. 2198, Eff. 12/22/89; AMD, 1994 MAR p. 1146, Eff. 4/29/94; TRANS & AMD, 1998 MAR p. 2706, Eff. 9/11/98; TRANS, from Commerce, 2001 MAR p. 1178.)

Subchapter 11

Establishment of New Branches

2.59.1101 APPLICATION PROCEDURE FOR APPROVAL TO ESTABLISH A NEW BRANCH BANK (1) An existing state-chartered bank shall file with the Division of Banking and Financial Institutions an application for approval to establish and operate a new branch bank.

(2) Applications shall be submitted on a form acceptable to the Division of Banking and Financial Institutions. Information on the application format shall be

obtained from the Division of Banking and Financial Institutions, Department of Administration, 301 South Park, P.O. Box 200546, Helena, MT 59620-0546, (406) 841-2920.

(3) The applicant shall publish its notice of intent to establish a new branch bank using the following procedure:

(a) if the application for a new branch bank also requires the approval of either the federal reserve system or the federal deposit insurance corporation, the notice shall be published at the times and in the format required by the federal agency, except that the notice shall include the following phrase: "Comments regarding this application should be forwarded in writing to the Commissioner of Banking and Financial Institutions, Department of Administration, 301 South Park, P.O. Box 200546, Helena, MT 59620-0546. The application may be reviewed, during the comment period, at the above address by calling the commissioner's office at (406) 841-2920 and requesting an appointment";

(b) if the applicant does not fall under the regulatory jurisdiction of either the federal reserve system or the federal deposit insurance corporation, or if the publication requirement of the federal regulator has been eliminated, the publication requirement shall be as follows:

(i) The notice shall be published, following a format obtained from the division, in a newspaper of general circulation in the community or communities where the main office of the bank and proposed branch bank are located. If there is no such newspaper in the community, then the notice shall be published in the newspaper of general circulation published nearest thereto. Publication shall be made at least once a week on the same day for two consecutive weeks.

(4) All written comments concerning the application must be received by the Division of Banking and Financial Institutions no later than 15 calendar days following the date of the last publication of the notice of intent. Comments received more than 15 calendar days after the date of the last publication will not be considered in the decision to approve or deny the application. Oral comments will not be considered, except for oral testimony that may be offered in the event of a public hearing.

(5) The application shall be mailed or delivered to the division of banking and financial institutions not more than ten days subsequent to the first publication of notice.

(6) Applications for new branch banks must be accompanied by a nonrefundable fee of \$600 for each new branch bank application. (History: 32-1-218, MCA; IMP, 32-1-218, MCA; NEW, 1989 MAR p. 2201, Eff. 12/22/89; AMD, 1994 MAR p. 1146, Eff. 4/29/94; AMD, 1997 MAR p. 1454, Eff. 8/19/97; TRANS, 1998 MAR p. 2480, Eff. 9/11/98; TRANS, from Commerce, 2001 MAR p. 1178.)

2.59.1102 REVIEW PROCEDURE FOR APPLICATIONS FOR APPROVAL TO ESTABLISH A NEW BRANCH BANK (1) Applications for new branch banks will be processed in the order in which

they are received by the Division of Banking and Financial Institutions. If an application is incomplete the applicant will be notified by telefax or mail. An application will not be considered to have been received until it is in a complete form. An application is complete when all information required by the application form has been submitted and received. The division may request additional information from an applicant even if the application is considered complete.

(2) Factors that will be considered when determining whether to approve an application to establish a new branch bank include, but are not limited to, the following:

(a) the financial history and condition of the applicant;

(b) the capital levels and capital structure of the applicant;

(c) the quality, financial and banking experience and depth of management of the applicant and the proposed branch bank;

(d) the convenience and needs of the community to be served at the proposed location of the new branch bank as evidenced by a brief statement provided by the applicant;

(e) earnings prospects of the applicant after establishing the new branch bank; and

(f) any other factors the division considers that could adversely affect the safety and soundness of the applicant or the viability of the new branch bank.

(3) For applications that do not require a public hearing, the Division of Banking and Financial Institutions shall issue its order approving or denying the application within 45 days after:

(a) the date of the last publication of the notice of intent to establish a new branch bank; or

(b) the date on which a complete application is received, whichever is later;

(c) the 45-day deadline may be extended by the division when review of the complete application raises questions or concerns that require additional information from the applicant or any other entity or person. Once the additional information is received by the division, the 45-day deadline may be extended by no further than 14 calendar days.

(4) For applications that require a hearing, as provided for by [32-1-202](#)(3) and [32-1-204](#)(2), MCA, a final decision to approve or deny the application will be issued by the state banking board at a time after the completion of the hearing.

(5) When the division of banking and financial institutions or board approves an application to establish a new branch bank, it will provide written notification to the applicant and the appropriate federal regulatory agency(s). The notification will include any conditions subject to the approval. Summary notification of the decision will be

mailed to all persons or entities that have submitted written comment to the application.

(6) When the Division of Banking and Financial Institutions denies an application to establish a new branch bank it will provide written notification to the applicant, the appropriate federal regulator(s) and all persons or entities that have submitted written comment to the application. The written notification to the applicant will include the reasons for the denial.

(7) If a hearing is requested on an application, the time for the filing of a request for a hearing must occur within 14 calendar days following the division's decision. (History: [32-1-372](#), MCA; IMP, [32-1-372](#), MCA; NEW, 1997 MAR p. 1454, Eff. 8/19/97; TRANS, 1998 MAR p. 2480, Eff. 9/11/98; TRANS, from Commerce, 2001 MAR p. 1178.)

2.59.1103 PROCEDURE FOLLOWING APPROVAL OF AN APPLICATION TO ESTABLISH A NEW BRANCH BANK (1) For applications approved by the board or Division of Banking and Financial Institutions, the applicant bank within 18 months from the date of approval must establish and open the new branch bank for regular business. Upon written request by the applicant and a finding of good cause by the division, the 18-month period may be extended by the division for a maximum of an additional six months.

(2) During the formation and establishment of the new branch bank, the applicant must inform the division of significant changes affecting any of the commitments, representations or projections contained in the original application. Significant changes including, but not limited to, the location of the new branch bank, the services to be offered by the new branch bank, the staffing or management of the new branch bank, the costs to be incurred during the construction, furnishing and fitting of the new branch bank or the projected operating costs of the new branch bank may be sufficient to void the board or division's approval.

(3) No later than ten business days before the new branch bank is opened for business, the applicant shall certify to the Division of Banking and Financial Institutions that all conditions imposed with the division's approval have been met and inform the division of the proposed opening date. The division will then issue a final order authorizing the new branch bank to open for business. (History: [32-1-218](#), MCA; IMP, [32-1-218](#), MCA; NEW, 1997 MAR p. 1454, Eff. 8/19/97; TRANS, 1998 MAR p. 2480, Eff. 9/11/98; TRANS, from Commerce, 2001 MAR p. 1178.)

Sub-Chapter 1

Organizational Rule

2.60.101 ORGANIZATION OF BOARD (1) The organization of the state banking board is set out in chapter 1. (History: Sec. 32-1-203, MCA; IMP, Sec. 2-4-201, MCA; Eff. 11/4/73; TRANS, from Commerce, 2001 MAR p. 1181.)

Sub-Chapter 2

Procedural Rules

2.60.201 PROCEDURAL RULES (1) The procedural rules of the state banking board are set out in chapter 2. (History: Sec. 32-1-203, MCA; IMP, Sec. 2-4-201, MCA; Eff. 12/5/73; TRANS, from Commerce, 2001 MAR p. 1181.)

2.60.202 INVESTIGATION RESPONSIBILITY (1) The board hereby authorizes the commissioner of banking and financial institutions and examining personnel of the banking and financial institutions division to gather, at the board's direction, all available information relative to an application. Information so gathered must be reported to the board in such form and in such manner as the board directs. The commissioner of banking and financial institutions is also authorized to make, or cause to be made, such investigations as he may determine are warranted under the circumstances existing and must make the information obtained available to the board. (History: Sec. 32-1-203, MCA; IMP, Sec. 32-1-203, MCA; Eff. 12/6/73; AMD, Eff. 4/4/77; AMD, 1994 MAR p. 1146, Eff. 4/29/94; TRANS, from Commerce, 2001 MAR p. 1181.)

2.60.203 APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION FOR A STATE CHARTERED BANK (1) One or more individual incorporators desiring to organize a bank shall file with the commissioner of banking and financial institutions an application to the state banking board for a certificate of authorization for a state chartered bank. Said application shall be signed by each of the incorporators, sworn to before an officer authorized by the laws of this state to administer oaths and contain the following information in addition to any other information as may be required pursuant to part 2 and 3 of chapter 1, Title 32, MCA:

(a) the names, addresses and principal occupations of the stockholders subscribing to the new bank;

(b) the proposed managing officer, if known, and directors/incorporators of the new bank, with banking experience and personal history of each in compliance with ARM 2.60.302;

(c) a summary of the evidence applicant intends to present at the hearing to demonstrate a persuasive showing of reasonable public necessity and demand for a new bank at the proposed location as required by ARM 2.60.301;

(d) information demonstrating capital adequacy of the proposed new bank as required by ARM 2.60.303;

(e) estimated operating statement and deposit volume at the end of each of the first three years;

(f) proposed expenditures for bank premises, fixtures, furniture and equipment;

(g) financial statements of the incorporators/directors and each of those stockholders controlling 10% or more of the stock in sufficient detail to substantiate their net worth;

(h) statement from the incorporator as to how they intend to meet the insurance requirement of ARM 2.60.304 (i.e., through membership in the federal reserve system or through application to the FDIC as a non-member.)

(2) An application fee of \$3,000 shall be paid to the state of Montana at the time of application and thereafter shall not be refundable in whole or in part.

(3) The proposed articles of incorporation shall be submitted with the application for a certificate of authorization.

(4) In the event that an application is incomplete in any respect or if additional information is required, the applicants will be so notified by the division of banking and financial institutions and allowed up to 60 days in which to perfect the application or provide additional information. An extension of this 60-day period may be obtained from the division of banking and financial institutions by showing good cause why it should be so extended.

(5) The form for applying for a certificate of authorization (FD-2) may be obtained from the Commissioner of Banking and Financial Institutions, Department of Administration, 306 S. Park Street, Suite 316, P.O. Box 200546, Helena, MT 59620-0546. (History: Sec. 32-1-203, MCA; IMP, Sec. 32-1-203, MCA; Eff. 5/5/74; AMD, Eff. 4/4/77; AMD, 1987 MAR p. 1970, Eff. 10/30/87; AMD, 1994 MAR p. 1146, Eff. 4/29/94; TRANS, from Commerce, 2001 MAR p.1181.)

2.60.204 PROCEDURAL RULES FOR DISCOVERY AND HEARING

(1) The state banking board and division adopt and incorporate the attorney general's model rules dated June 30, 1992, by reference, as stated in ARM 1.3.101 through ARM 1.3.233, with the exceptions set forth in ARM 8.2.104 through 8.2.106. Prehearing discovery procedures shall be allowed in the same manner as specified under the Montana Rules of Civil Procedure relative to district court actions. The time period established in discovery may be shortened at the discretion of the board.

(2) The state banking board adopts "Roberts Rules of Order."

(3) The division of banking and financial institutions and the state banking board adopt the following rules for hearings on applications for certificates of authorization for new banks and protests of applications for

the formation, relocation, closure or sale of a branch bank or for the consolidation, merger or relocation of a bank if the application is approved by the division and if the board determines that there is a substantial basis for the protest. The division also may request a hearing before the board.

(4) A notice of filing for a hearing on the application for a certificate of authorization for a new bank must be mailed to all banks within 100 miles of the proposed location, measured in a straight line. The notice of hearing on applications approved by the division in which the board determines there is a substantial basis for the protest must also be mailed to all banks within 100 miles of the proposed location, measured in a straight line. All of the rights and procedures of contested case proceedings apply to a person or bank filing a written protest with the board.

(5) A written protest must be filed with the division no later than 15 calendar days following the notice of the filing of an application for a certificate of authorization for a new bank. A written protest on all other applications must be filed no later than 15 calendar days upon the filing of the application with the division.

Sub-Chapter 3

New Bank Charters

2.60.301 PERSUASIVE SHOWING OF REASONABLE PUBLIC NECESSITY AND DEMAND (1) In determining whether a reasonable public necessity and demand is established in any case, the board requires that these words be given a meaning which will promote the public interest of the community as a whole in having a sound banking structure, reasonably competitive and adequate for the needs of the community.

(2) In making this determination the following are among the factors which the board may consider:

(a) the number of banks already serving the area in which the proposed bank would locate;

(b) the size of the area;

(c) the population of the area;

(d) the wealth of residents of the area;

(e) the commercial and industrial development of the area;

(f) the socio-economic trends of the area;

(g) the adequacy of the services being provided by existing banks compared to the needs of residents and the services to be offered by the proposed bank, including a detailed list of banking services that will be offered the community to be served by the new bank;

(h) the capability of existing banks to handle potential growth of the area;

(i) the convenience of the location of existing banks to residents of the area as compared to convenience of the proposed bank;

(j) the size of financial institutions in the area;
(k) the history of financial institutions in the area;
(l) an indication of the support the proposed bank could reasonably expect to receive from representative segments of the businesses and residents of the area; and
(m) the probability of the success of the proposed bank. (History: Sec. [32-1-203](#), MCA; IMP, Sec. [32-1-203](#), MCA; Eff. 12/6/73; AMD, Eff. 4/4/77; AMD, 1994 MAR p. 1146, Eff. 4/29/94; TRANS, from Commerce, 2001 MAR p. 1181.)

[2.60.302](#) MANAGEMENT OF PROPOSED BANK (1) To establish reasonable assurance that the bank will be safely and soundly operated as required by [32-1-203](#), MCA, and recognizing that the ultimate responsibility for management of a bank reposes in its board of directors, the banking board will not order the commissioner of banking and financial institutions to issue a certificate of authority to a proposed bank if the board finds that any one or more of the proposed directors of the new bank has questionable moral character or lack of financial integrity and, therefore, does not command the confidence of the community in which the proposed bank is to be located.
(2) In the event that the application for a state bank charter does not include the name and qualifications of the proposed managing officer, the board will direct that if a charter is to be issued for the proposed bank it shall be conditioned upon the submission of the name and qualifications of a proposed managing officer to the division of banking and financial institutions at least 60 days prior to the opening of the bank and that the division of banking and financial institutions find said proposed managing officer unobjectionable. (History: Sec. [32-1-203](#), MCA; IMP, Sec. [32-1-203](#), MCA; Eff. 12/6/73; AMD, Eff. 4/4/77; AMD, 1994 MAR p. 1146, Eff. 4/29/94; TRANS, from Commerce, 2001 MAR p. 1181.)

[2.60.303](#) CAPITAL ADEQUACY OF PROPOSED NEW BANKS The applicant must provide a reasonable assurance that the proposed new bank will have adequate initial paid-in capital sufficient to accomplish the following:

(1) Establish an undivided profits account in an amount great enough to absorb initial operating losses under foreseeable business conditions.

(2) Total capital and surplus accounts of adequate size to permit the proposed investment in building, land, furniture and fixtures within the limitation of 50% of capital and surplus as imposed by [32-1-423](#), MCA.

(3) Provide protection for depositors' funds to the same extent that the average of all insured commercial banks in the proposed bank's peer group provides capital protection, measured by the most current peer group data

available on total capital accounts and reserves as a percentage of total assets. The proposed bank's reasonably estimated total assets at the end of its first three years of operation shall be the basis upon which this standard shall be projected.

(4) To enable the bank to furnish competitive services that will ensure an amount of business sufficient to assure its success. (History: Sec. 32-1-203, MCA; IMP, Sec. 32-1-203, MCA; Eff. 12/6/73; AMD, Eff. 4/4/77; AMD, 1994 MAR p. 1146, Eff. 4/29/94; TRANS, from Commerce, 2001 MAR p. 1181.)

2.60.304 BANKS - FDIC INSURANCE REQUIRED (1) To comply with 32-1-203, MCA, it has been determined by the state banking board that it is in the public interest to require all commercial banks to be accepted by the federal deposit insurance corporation for the insurance of deposits. The board will not order the commissioner of banking and financial institutions to issue a certificate of authorization to a proposed new bank unless:

(a) the division of banking and financial institutions has received official notice that the proposed bank has been accepted for insurance of deposits; or,

(b) the division of banking and financial institutions has received satisfactory assurance from the FDIC or the federal reserve bank of Minneapolis that the proposed bank will be accepted for insurance when the proponents comply with certain stated minor requirements imposed by the FDIC. Such "minor requirements" must be of a type and character which the board determines can be promptly complied with by the proponents without serious difficulty. (History: Sec. 32-1-203, MCA; IMP, Sec. 32-1-203, MCA; Eff. 12/6/73; AMD, Eff. 4/4/77; AMD, 1994 MAR p. 1146, Eff. 4/29/94; TRANS, from Commerce, 2001 MAR p. 1181.)

2.60.305 PRO FORMA STATEMENT (1) An operational projection shall be submitted as part of the application for new bank charters, in order to show that the new bank will remain solvent while meeting the requirements set forth in ARM 2.60.303. The pro forma statement will include, at a minimum:

(a) a projected three-year comparative balance sheet and income projection,

(b) information on start-up costs, including legal fees, and other costs that may be amortized, and

(c) costs associated with fixed assets and their maintenance.

(2) The statement will reasonably estimate the volumes of business the new bank anticipates in the first three-year period, and will show its reasons for believing it will develop such business aggregates. (History: Sec. 32-1-203, MCA; IMP, Sec. 32-1-203, MCA; NEW, 1994 MAR p.

1146, Eff. 4/29/94; TRANS, from Commerce, 2001 MAR p.
1181.)